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Supreme Court, U.S.
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No.

In the Supreme Court of the United States

OCTOBER TERM, 1998

LAWRENCE B. HANLON,

Petitioner,

v.

JAMES A. DUNBAR,

Respondent.

On Petition for Writ of Certiorari to the District of Columbia Court of Appeals

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PETITION FOR WRIT OF CERTIORARI

LAWRENCE B. HANLON
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Washington, D.C. 20007
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Petitioner Pro se.

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QUESTIONS PRESENTED FOR REVIEW

I. Did the District of Columbia Court of Appeals err when it granted Respondent summary judgment? If yes, was such error caused by said court's failure to evaluate all of Petitioner's circumstances, to scrutinize the record as a whole, and to make any favorable inferences from evidence of record supportive of Petitioner's position?

II. Did the DCCA err when it reversed the rules for the grant of summary judgment by implicitly shifting the burden of proof from Respondent to Petitioner to demonstrate that there was no genuine issue of material fact in dispute in this case?

III. If the above errors were made, were Petitioner's rights to due process and of a trial by jury under the U.S. Constitution thus violated?

PARTIES TO THE PROCEEDINGS

The parties to the proceedings in this Court are Lawrence B. Hanlon (Petitioner) and James A. Dunbar, Esquire (Respondent).

Petitioner is the former 50% shareholder of *Federal Messenger & Delivery Service, Inc.*, a now defunct closely-held corporation duly formed in 1970 under the laws of the District of Columbia.

Respondent is a partner in the law firm of Venable, Baetjer, Howard & Civiletti in Washington, D.C.

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The Memorandum Opinion and Judgment of the District of Columbia Court of Appeals order is unpublished and is reprinted at App. 3a. The order is dated January 9, 1998. The order of the District of Columbia Court of Appeals denying a rehearing *en banc* is reprinted at App. 1a and is dated May 26, 1998.

For reference of the Court, the transcript of the trial court's July 2, 1996, order dismissing Petitioner's complaint is reprinted at App. 7a.

Also reproduced here are a letter from the Chairman of Venable, Baetjer, Howard & Civiletti, Benjamin R. Civiletti, Esquire, acknowledging receipt of Petitioner's first notification of Respondent's fraud, at App. 9a, and three letters from attorneys refusing to take Petitioner's case, at App. 10a, App. 11a, and App. 13a, respectively.

For further reference of the Court, the transcript of the Oral Argument before the DCCA on October 16, 1997, is reprinted at App. 14a through App. 40a.

JURISDICTION

The decision of the District of Columbia Court of Appeals denying the Petitioner's timely filed motion for a rehearing *en banc* is dated May 26, 1998.

In accordance with Application No A-961, an extension of time within which to file the petition for a writ of certiorari was granted to and including September 24, 1998.

This Court's jurisdiction is invoked pursuant to 28 U.S.C.A. §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

US Const Amendment VII provides:

> In suits at common law, where the value of the controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

US Const Amendment XIV

> Sect. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws.

The D.C. Code § 12-301. Limitation of time for bringing actions, provides in pertinent part:

[D.C. Code § 12-301 (8) (Repl. 1995)]

Except as otherwise specifically provided by law, actions for the following purposes may not be brought after the expiration of the period specified below from the time the right to maintain the action accrues:

8) for which a limitation is not otherwise specially prescribed — 3 years.

STATEMENT OF THE CASE

This case originated in the Superior Court of the District of Columbia in Washington, D.C. There, on April 10, 1996, Petitioner filed a legal malpractice complaint alleging Respondent had knowingly and willingly given Petitioner fraudulent counsel regarding the enforceability of a judgment.[1]

Respondent countered with a Super.Ct. Civ.R.12(b)(6) motion to dismiss, asserting the three-year statute of limitations for legal malpractice claims had expired. Petitioner in turn argued that Respondent's acts had tolled the statute, because he had been lulled by Respondent's fraudulent counsel. On July 2, 1996, the trial court dismissed Petitioner's complaint pursuant to D.C.Code 12-301 (1995 Repl.) (App. 7a). To interpret the statute, the court cited *Knight v. Furlow*, 553 A. 2d 1232 (D.C. App. 1989) and *Bussineau v. President & Dirs. of Georgetown College*, 518, A.2d 423, 425 (D.C.1986), stating, among other things, that Petitioner's "claim of 'excessive fees'" indicated earlier knowledge of injury, even though **nowhere**

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[1] In April 1987 Petitioner had retained Respondent to recover losses suffered from the conversion of Petitioner's assets in *Federal Messenger & Delivery Services, Inc.*

Although Respondent secured a $57,639.72 default judgment for Petitioner, he subsequently counseled Petitioner, following a $25,000.00 collection on a related promissory note (App. 20), that the judgment was now "no longer valid or enforceable", which counsel was subsequently proved to be fraudulent. (See App. 16a, 17a, 19a.)

in the record had Petitioner asserted any claim of "excessive fees".[2] (App. 21a, 22a, passim.)

Because of Respondent's failure to deny the fraud alleged (App. 27a, 28a), the sole issue in dispute here is the courts' determination on behalf of Respondent of the date on which Petitioner discovered injury.

Petitioner pled that Respondent had been able, in his dual role as attorney-of-record for Petitioner and attorney-in-fact for the Judgment Debtors, to obscure the relationship between the fact of injury and the alleged tortious conduct by lulling Petitioner into believing that his legal counsel regarding the "no longer valid or enforceable" judgment was reliable—until the March 17, 1994 payment on said judgment changed that belief.[3] Petitioner accordingly asserted that the statute of limitations had been tolled by Respondent's reasonably-relied-upon counsel and that therefore his malpractice claim had been timely filed because Petitioner, like *Bussineau*, had **no** knowledge (App. 16a, 17a) of (1) the existence of any injury, (2) its cause in fact, (3) or any evidence of wrongdoing **until** the March 17, 1994, payment, after which date Petitioner's investigation into the reasons for Respondent's fraud revealed the *quid pro quo* arrangement between Respondent and the Judgment-Debtors to defraud Petitioner out of the monies due to him under the judgment.

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[2] Respondent improperly introduced the non-existent "excessive fees" issue in order to induce the trial court into committing error. Petitioner never asserted an "excessive fees" claim and indeed called attention to Respondent's ruse in all his pleadings, for which reason the trial court should not have been misled by Respondent's specious pleadings.

[3] On March 17, 1994, one of the judgment debtors paid Petitioner $25,000.00.

Petitioner additionally argued that his claim significantly differed from *Knight* because Knight, had, in an exchange of correspondence with Attorney Furlow, specifically acknowledged earlier knowledge of injury from Furlow's negligence years in advance of filing his malpractice claim.[4]

In striking contrast, Petitioner, having had no earlier knowledge of any injury, did not begin his correspondence regarding Respondent's fraud with the Chairman of Venable, Baetjer, Howard & Civiletti, Benjamin R. Civiletti, Esquire, **until** March 30, 1994, two weeks after the judgment payment date (App. 9a).

Clearly neither the facts, circumstances, nor the legal principle underlying *Knight* in any way apply to those of the Petitioner's case. Furthermore, the trial court's citing of *Bussineau* against Petitioner failed to utilize the "discovery rule" articulated in that case which, if applied, would establish March 17, 1994, as Petitioner's injury discovery date. Accordingly, neither *Knight* and certainly not *Bussineau* can be cited against Petitioner to interpret the statute because the spirit and the letter of these two cases—the former involving mere negligence and the latter the DCCA "discovery rule"—support Petitioner's argument that the relationship between the fact of injury and the tortious conduct alleged had been obscured by the Attorney-Respondent's fraudulent counsel causing the statute of limitations to be tolled until Petitioner's discovery of injury on March 17, 1994.

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[4] Said correspondence even included a demand from Knight for a 'settlement letter' to compensate him for losses caused by Attorney Furlow's mere negligence.

Accordingly, on appeal to the District of Columbia Court of Appeals, Petitioner raised the following issues, arguing that:

I. The trial court failed to utilize the DCCA "discovery rule" articulated in *Bussineau* to determine the date when Petitioner discovered injury. Additionally, Petitioner argued, the trial court had erroneously divided the elements comprising *Bussineau* by citing only those elements in it that favored Respondent.

II. The trial court cited the **mere negligence** *Knight* case, even though neither its circumstances, facts, nor underlying principle in any way corresponded to Petitioner's **fraud** case with its absence of any *Knight*-like letters and its presence of the fraud as alleged by Petitioner.

III. The trial court failed to apply any of the fundamental principles of equity, such as ***jura novit curia***, which would require the court to put Petitioner on an equal footing with Respondent, given that Petitioner's access to the assistance of counsel had been unfairly restricted because of Respondent's partnership in the Venable law firm, requiring Petitioner to proceed **pro se** in order to access the civil justice system.[5]

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[5] Subsequent to Petitioner's correspondence with the Venable Chairman (App. 9a) to negotiate a settlement, Petitioner contacted several attorneys to file suit to recover his losses. The attorneys consulted, however, refused to take Petitioner's case, uniformly informing him that (i) because the Venable firm was involved, (ii) because the damage amount was not large, and (iii) because of the type of "favors" exchanged between the Judgment Debtors and Respondent in the fraud alleged by Petitioner, it was very unlikely that any lawyer [footnote continued]

On January 9, 1998, the District of Columbia Court of Appeals affirmed the trial court's order in a Memorandum Opinion and Judgment, (App. 3a).

With respect to Issue I, the Court ruled Petitioner, like *Knight*, had earlier knowledge of injury, and declined to utilize *Bussineau*'s "discovery rule" or any other element in *Bussineau* supportive of Petitioner's position. In fact, the DCCA's ruling no longer cited any portion of *Bussineau* to interpret the statute and dropped any reference to Petitioner's non-existent 'excessive fees' claim. To affirm the trial court's ruling it substituted *Bussineau* with *Hendel v. World Plan Executive Council and Maharishi International University*, No. 96-CV-105 (D.C. Dec. 30, 1997), a case in which the plaintiff Hendel, after a 17-year involvement in the Maharishi Yogi's Transcendental Meditation programs and after consulting 42 different health care providers, alleged to have suffered serious mental and physical injury from said programs. In this connection, however, the court neglected to point out (i) that Ms. Hendel, far from being unfairly restricted from access to the assistance of counsel, was always represented by counsel, (ii) that all her allegations were substantively challenged by the opposing parties, and (iii) that she at no time sought to clarify any of her statements. These three elements in *Hendel* are the exact opposite of the circumstance of Petitioner's case.

Dealing with Issue II, the DCCA also cited *Knight* to interpret the statute, despite the presence of the fraud as alleged by Petitioner and the absence, within or without the record, of any *Knight*-like exchange of letters that would indicate earlier knowledge of injury, which factors established that the circumstances, facts, and underlying

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would become involved in such a suit, regardless of its merits. (See letters at App. 10a, App. 11a, and 13a.)

principle of Petitioner's case significantly differed from *Knight*.

As regards Issue III, the court omitted passing judgment on the equity issue raised by Petitioner, which omission not only led the court to refuse to take into account Petitioner's inaccessibility to the assistance of counsel and other disadvantageous circumstances but also implicitly placed upon Petitioner, the non-moving party, the burden of proof to demonstrate that there was no genuine issue of material fact in dispute and that Respondent, as the moving party, was entitled to summary judgment as a matter of law. The court's implicit shifting of the burden of proof from Respondent to Petitioner constitutes a serious breach of procedural law in a fundamental area of due process. Accordingly, the court's omission to rule on the equity issue represents a failure on its part to fulfill its basic obligations and constitutes a denial of Petitioner's constitutional right to due process.

On January 23, 1998, Petitioner applied for a rehearing *en banc* in the District of Columbia Court of Appeals, arguing - **one** - that the court had in effect relieved Respondent, as the moving party, of the burden of proof to demonstrate that there was no genuine issue of material fact in dispute; **two** - that the court had failed to fulfill its basic obligations when it omitted to rule on and apply the fundamental principles of equity pertinent to this case in order to offset the inherent disparity between a partner in a prominent law firm and a *pro se* plaintiff unfairly restricted from the assistance of counsel for the reasons stated herein, an issue that was never challenged by Respondent; and **three** - that the court had failed to utilize the "discovery rule" articulated in *Bussineau* to determine when the discovery of injury occurred.

This motion was denied without elaboration by the District of Columbia Court of Appeals on May 26, 1998. (App. 1a.)

On June 18, 1998, this Court granted Petitioner's application to extend time within which to file a petition for writ of certiorari up to and including September 24, 1994. (Application No. A-961).

This Petition follows.

REASONS FOR GRANTING WRIT

Petitioner urges this Court to grant *certiorari* to determine whether the District of Columbia courts have violated Petitioner's constitutional rights to due process and of a trial by jury when they granted Respondent summary judgment.

The lower courts' rulings clearly indicate their failure to fulfil their basic judicial obligations, required under prevailing precedent, to evaluate "all of the plaintiff's circumstances" (*See Diamond v. Davis*, 680 A.2d 364, 372 (D.C. 1996), to scrutinize "the record as a whole" (*See Diamond*, *supra*, 680 A.2d 364, 372 (D.C. 1996), and to make "all favorable inferences which may reasonably be drawn from the evidentiary materials" (*Beard v. Goodyear Tire & Rubber Co.*, 587 A.2d 195, 198 (D.C. 1991), particularly in light of the fact that the courts were fully aware that Petitioner's circumstances unfairly restricted him from the assistance of counsel which required him to proceed *pro se* in order to access the civil justice system.

Moreover, the lower courts' rulings, which were not adequately articulated by the courts, provided no rational basis for determining for Respondent the date on which Petitioner discovered injury, because said rulings are not supported by any objective evidence of record. Rather the courts limited comment to the initial idiomatic spontaneous responses, timely clarified under oath, of a first-time lay plaintiff in reaction to information that became available to him after March 17, 1994, but reluctant to admit his manipulation by Respondent (App. 18a), to base its determination of the discovery of injury date.

Plainly had Petitioner's access to the judicial system not been unfairly restricted, his complaint would have been professionally drafted by an attorney in flawless legal language devoid of such idiomatic spontaneous responses

made in view of information received after March 17, 1994, regarding the reasons for Respondent's fraudulent counsel.

I. THE DISTRICT OF COLUMBIA COURT OF APPEALS ERRED WHEN IT GRANTED RESPONDENT SUMMARY JUDGMENT BECAUSE IT FAILED TO EVALUATE ALL OF PETITIONER'S CIRCUMSTANCES, TO SCRUTINIZE THE RECORD AS A WHOLE, AND TO MAKE ANY FAVORABLE INFERENCES FROM EVIDENCE OF RECORD SUPPORTIVE OF PETITIONER'S POSITION.

Such disregard of Petitioner's circumstances, failure to scrutinize the record as a whole, and to make any favorable inferences from evidence of record supportive of Petitioner's position led the courts to erroneously grant Respondent summary judgment, thereby usurping the constitutionally-mandated role of a jury. *See Sherman v. District of Columbia*, 653 A.2d 866, 869 (D.C. 1995).

Furthermore, the lower courts' rulings, if allowed to stand, would require of the *pro se* Petitioner, or other layperson deprived of the assistance of counsel for the reasons stated herein, a level of legal sophistication in the drafting of his or her complaint equal to that of an Attorney-Respondent. Such a requirement, particularly in light of Petitioner's circumstances in this case, would have broad impact on similar cases where summary judgment may also be erroneously granted in lay-initiated proceedings against professionals in prominent firms where legal counsel is unavailable.

Clearly had the lower courts evaluated all of the Petitioner's circumstances, scrutinized the record as whole, and made any favorable inferences from the evidence of record supportive of Petitioner's position, they should have reasonably concluded, given the absence of any objective *Knight*-like letters or any other objective evidence, that Petitioner had not discovered injury before March 1994, given Respondent's professional ability to obscure the relationship between the fact of injury and the tortious conduct alleged through his trusted, albeit fraudulent, counsel. (App. 39a.)

A cause of action generally accrues at the time the alleged injury occurs. *See Bussineau v. President & Dirs. of Georgetown College*, 518 A.2d 423,425 (D.C. 1986). However, the "discovery rule" is applied to determine when a cause of action accrues, and when the statute of limitations commences to run, in circumstances "where the relationship between the fact of injury and the alleged tortious conduct ....[is] obscure." *Id.* Clarifying the relevant legal test to be applied in determining accrual under the "discovery rule," *Bussineau* stated that "one must know or by the exercise of reasonable diligence should know (1) of the injury, (2) its cause in fact, and (3) of some evidence of wrongdoing" *Id.* at 435. When applying this test "the inquiry is highly fact-bound and requires an evaluation of ALL of the plaintiff's circumstances." *Diamond, supra*, 680 A.2d 364,372 (D.C. 1966). [Emphasis added.]

To prevail on a motion for summary judgment, Respondent, as the moving party, bore, in the absence of any objective evidence, such as the *Knight*-letters, the burden of proof to demonstrate that there was no genuine issue of material fact in dispute and that he was entitled to summary judgment as a matter of law. See Super.Ct.Civ. R. 56(c); *Colbert v. Georgetown Uni.*, 641 A.2d 469, 472 (D.C. 1994) (en banc). Because of

Respondent's burden of proof requirement, all of the Petitioner's circumstances and the record as a whole, including Petitioner's sworn clarifications of his initial spontaneous responses, must be viewed in the light most favorable to Petitioner, as the non-moving party, for which reason Petitioner is entitled to "all favorable inference which may be reasonably drawn from the evidentiary materials". *Beard, supra,* 587 A.2d 195, 198 (D.C. 1991).

Compounding the unfairness to Petitioner, said rulings, which indicate the courts' failure to fulfill their fundamental obligations under law and equity regarding due process, shifted the burden of proof of knowledge of injury upon Petitioner, the non-moving party, when in fact it is the Respondent, as the moving party, who must establish the date of injury from the fraud alleged in order to be entitled to summary judgment as a matter of law.

Nonetheless, the courts in effect relieved Respondent of his burden of proof requirement and erroneously treated the non-moving Petitioner as if he were the party moving for summary judgment, to determine, on behalf of Respondent, Petitioner's earlier knowledge of injury.

II. THE DCCA ERRED WHEN IT REVERSED THE RULES FOR THE GRANT OF SUMMARY JUDGMENT BY IMPLICITLY SHIFTING THE BURDEN OF PROOF FROM RESPONDENT TO PETITIONER TO DEMONSTRATE THAT THERE WAS NO GENUINE ISSUE OF MATERIAL FACT IN DISPUTE IN THIS CASE.

Such reversal of the rules and obvious failure by the courts to fulfill their basic obligations under law and equity to require the moving party to demonstrate that there was no

genuine issue of material fact in dispute and to introduce a measure of equity into this type of case, constitute judicial errors that have caused a denial of Petitioner's constitutional rights to due process and of a trial by jury. (App. 39a.)

In this connection, the trial court, despite the absence of any documentary evidence, such as the exchange of correspondence in *Knight* and despite the presence of *ex dolo malo* fraud alleged by Petitioner (which automatically places in dispute genuine issues of material fact as to whether Petitioner's cause of action accrued before or after March 17, 1994), granted summary judgment to Respondent, citing *Knight* and *Bussineau* to interpret the statute of limitations in D.C. Code § 12-301 (1995 Repl.).

The District of Columbia Court of Appeals affirmed the trial court's decision, although it did exempt Petitioner from having any part of *Bussineau* used against him again when it substituted *Bussineau* with *Hendel v. International World Council and Maharishi International University* (No. 96-CV-105)[6], in which the plaintiff, who was never restricted from the assistance of counsel and in fact was always represented by counsel, whose allegations were substantively challenged by the defendants, and who never sought to clarify any of her statements, alleged, after a 17-year involvement both as a student and a teacher in the Maharishi Yogi's Transcendental Meditation programs and after consulting 42 different health care providers, to have

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[6] It should be noted that the *Hendel* case was brought under the D.C. Consumer Protection Procedures Act, D.C. Code §§ 28-3901-3905 (1996) and is in no way germane to the central issue of Petitioner's case, namely, tortfeasance by professionals in prominent firms.

suffered serious mental and physical injury from said programs.[7]

In view of the DCCA's requirement to conduct a *de novo* review of summary judgment and the "highly fact-bound" nature of the "discovery rule" inquiry, it was necessary for it to have evaluated **all** of Petitioner's circumstances, to have scrutinized the record **as a whole**, and to have made **favorable inferences** from evidence of record supportive of Petitioner's position.

A review of the record as a whole reveals that the DCCA simply did not have any objective basis, such as it had in *Knight* and *Hendel*, to determine when Petitioner was first put on notice regarding Respondent's malpractice, given the absence of any documentary evidence as in *Knight* and the presence in *Hendel* of the facts that Ms. Hendel (i) was never restricted from the assistance of counsel and was at all times represented by counsel, (ii) had all of her allegations substantively challenged by the defendants, and (iii) never sought to clarify any of her statements.

In *Knight*, Attorney Furlow, as the moving party, proved Knight's earlier knowledge by producing Knight's letters. In *Hendel*, the defendants, also the moving parties, proved on the basis of Ms. Hendel's interrogatory answers that there was no genuine issue of material fact in dispute and that they were therefore entitled to summary judgment as a matter of law. Thus, the moving parties in *Knight* and *Hendel* accepted their burden of proof requirements in sharp contrast to Respondent's inaction in this case. However, in

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[7] As the record as a whole shows, at no time did Petitioner ever consult with, request of, or receive from any attorney any legal counsel regarding his injury from legal malpractice until after March 17, 1994. (See letters at App. 9a, App. 10a, App. 11a, and App. 13a.)

Petitioner's case, the DCCA improperly intervened on behalf of Respondent and unconstitutionally shifted the burden of proof to the non-moving Petitioner, resulting in a denial of Petitioner's constitutional rights to due process and of a trial by jury.

Instructive in this connection is a case similar to *Hendel*, viz., *Kropinski v. World Plan Executive Council-US*, 272 App. D.C. 17, 853 F.2d 948 (1988), in which the court upheld the denial of the defendants' motion for summary judgment on a fraud claim based on the statute of limitations because the district court "properly concluded that ***it was for the jury to decide*** when Kropinski discovered or, ***under the special circumstances of this case***, should have discovered the fraud." *Id.*, *Kropinski* at 23,853 F.2d at 955. (Emphasis added twice.)

Like Petitioner, Kropinski had been specifically reassured that everything had been dealt with in a professional manner, i.e., the judgment in question was "no longer valid or enforceable" for the legal reasons explained to Petitioner by Respondent following the collection on a related promissory note. (App. 38a, 39a). *Kropinski* notes that a plaintiff in such circumstances might be "lulled into inaction, and stated that **"the running of the statute is tolled beyond the discovery day if the tortfeasor reassures the victim that the negative effects should be expected as part of the treatment, and if a reasonable person would believe such reassurances."** *Id.* (emphasis added), for when assessing the circumstances relevant to a person's knowledge, it is necessary to consider the person's reliance on individuals they trust (App. 39a).[8]

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[8] Petitioner had been a previous recipient of Venable counsel. Because his experiences with the firm were favorable, he came to rely on the honesty of Venable attorneys. Thus, [footnote continued]

In fact, had the DCCA evaluated all of the Petitioner's circumstances, reviewed the entire record *de novo*, and made any favorable inference from evidence of record supportive of Petitioner's position, applying the same substantive standard of review utilized by the trial court as it was required to do (*See Walton v. District of Columbia*, 670 A.2d 1346, 1353 (D.C. 1994), it would have also cited *Bussineau* to interpret the statute instead of deleting and replacing it with *Hendel* when it affirmed the trial court ruling.

The different and contradictory case law cited to interpret the statute reveals not only the confusion between the two courts but also their fundamental misunderstanding of the facts, circumstances, and legal principle of Petitioner's case vis-à-vis *Knight* and *Hendel*, as well as their implicitly relieving Respondent of his burden of proof to establish the injury discovery date by making inferences so unfavorable to Petitioner as to ignore evidence of record supportive of Petitioner's position.

As it is obvious that if Respondent, as the party moving for summary judgment, could have demonstrated to the court the precise date on which Petitioner discovered Respondent's fraud, then it is also equally obvious that Respondent would have produced such evidence to the court in order to satisfy the burden of proof requirement for grant of summary judgment as matter of law.

Petitioner's reliance on Respondent's counsel was certainly reasonable. More importantly, Respondent was a member of D.C. Bar and thus an Officer of the Court sworn to promote, not to subvert, the administration of justice. (App. 39a.)

"The client ... cannot be expected to recognize professional negligence if he sees it, and should not be expect to watch over the professional or to retain a second professional to do so." *See Hendrickson v. Sears*, 365 Mass. 83, 310 N.E.2d. 131, 135 (1974).

Therefore, the fact that the Respondent did not produce such evidence constitutes a conclusive basis for the court to affirm that Respondent had failed to meet his burden of proof requirement and thus was not entitled to summary judgment.

Accordingly, Respondent's failure to demonstrate that there was no genuine issue of material fact in dispute regarding the alleged fraud should have caused the court to cite Respondent's failure to do so as a basis for denying him the grant of summary judgment.

Irrespective of the lower courts' omission to consider evidence of record supportive of Petitioner's position (App. 16a, 38a) and regardless as to how reasonable persons may argue over various conjectures as to the date when Petitioner discovered injury (despite Respondent's burden of proof requirement to establish that date), **it remains constitutionally mandated for a jury to resolve the disputed issues of material fact and credibility that are so much in evidence from the record of this case.**

III. THE DCCA ERRED BECAUSE IT VIOLATED PETITIONER'S RIGHTS TO DUE PROCESS AND OF A TRIAL BY JURY UNDER THE U.S. CONSTITUTION.

Through a series of errors and omissions, the DCCA has violated Petitioner's fundamental constitutional rights.

Under the rules regarding the grant of the 12(b)(6) motion, the court had to assume that Petitioner's allegations were true, because the court did not make any findings of fact of any kind (App. 27a). Clearly in this instance the court erred when if failed to follow its own rules.

Because it was the Respondent who had the burden of proof to demonstrate that there was no genuine issue of

material fact in dispute regarding the alleged fraud, the court should have viewed Respondent's failure to meet his burden of proof as an admission of his inability to produce the evidence needed for grant of summary judgment.

Therefore, in the absence of any objective evidence whatsoever, such as the letters in *Knight* and the interrogatory answers in *Hendel*, the court had no right to improperly intervene on behalf of Respondent and to establish for him the grounds for granting him summary judgment.

The record as a whole reveals that there is considerable dispute as to when Petitioner associated the problems he was experiencing with Respondent's tortious conduct. Thus, Petitioner's actions and circumstances must be viewed against an objective standard and what a reasonable person would have done under Petitioner's distinctive circumstances. *See Diamond, supra,* 680 A.2d at 372.

Petitioner's circumstances, as the record shows, were indeed distinctive, given the nature of the fraud perpetrated and the reasons therefor, Petitioner's reasonable reliance on Respondent, and Petitioner's layperson status vis-à-vis the Attorney-Respondent's professional expertise.[9]

Clearly the DCCA also erred in this case when it failed to evaluate all of Petitioner's circumstances, to scrutinize the record as a whole, and to make any favorable

---

[9] For reference of this Court, it should be noted that Footnote 12 in *Bussineau* reads as follows: **12.** As Justice Robert Braucher, speaking for the Supreme Judicial Court of Massachusetts said: "The client is not an expert; he cannot be expected to recognize professional negligence if he sees it, and should not be expected to watch over the professional or to retain a second professional to do so." *Herdrickson v. Sears, supra.* 310 N.E.2d at 135. Hence, Petitioner was under no due-diligence obligation to detect Respondent's fraud.

inferences from evidence of record supportive of Petitioner's position.

Additionally, the court omitted to address the equity issue so applicable to this case.

Thus, Petitioner's case cannot be controlled by either *Knight* or *Hendel*, but must follow the framework of *Diamond*, *Beard*, *Sherman*, *Kropinski*, and *Bussineau*, with its 'discovery of injury' rule, because clearly neither *Knight* nor *Hendel* embody the appropriate precedent needed to fairly interpret the statute for this case.

In light of the availability of the "discovery rule" as articulated in *Bussineau*, the rulings of the DC courts contradict and negate that rule which hitherto has been followed in all similar cases, the abandonment of which would severely limit the right of recovery by laypersons who suffer damages as a result of circumstances similar to those described herein from tortfeasors in prominent professional positions determined to thwart the civil justice process.

Equity and law mandate that access to the civil justice system should not be restricted because of a given defendant's position in a prominent firm, or the amount of damages involved, or the limited litigating skills of a *pro se* plaintiff.

Grant of summary judgment under the circumstances described herein constitutes an unconstitutional denial of Petitioner's rights to due process and of a trial by jury. The erroneous grant of summary judgment in such cases unconstitutionally restricts access to the civil justice system for laypersons who are unable to obtain counsel for controversial cases involving less-than-major damage amounts against tortfeasors whose professional abilities and status induce them to erroneously assume that laypersons in such circumstances lack legal remedies to hold them accountable for their wrongdoing.

RELIEF REQUESTED

For all the reasons stated above, Petitioner requests this Court to preserve his constitutional rights to due process and of a trial by jury by issuing a writ of certiorari or alternatively by remanding this matter for further proceedings.

Respectfully submitted,

LAWRENCE B. HANLON
3720 R Street, N.W.
Washington, D.C. 20007
(202) 342-2380

Petitioner Pro se.

APPENDIX A

District of Columbia
Court of Appeals

FILED
MAY 26, 1998

No. 96-CV-1052

LAWRENCE B. HANLON,
Appellant,

CA2901-96

v.

JAMES A. DUNBAR,
Appellee.

BEFORE: Wagner, Chief Judge; Terry, *Steadman, Schwelb, Farrell, King, Ruiz, and *Reid, Associate Judges; *Gallagher, Senior Judge.

O R D E R

On consideration of appellant's *pro se* petition for rehearing or rehearing en banc, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing en banc, it is

FURTHER ORDERED that the petition for rehearing en banc is denied.

PER CURIAM

Copies to:

Honorable Geoffrey M. Alprin

Lawrence B. Hanlon
3720 R Street, NW
Washington, DC 20036

Lawrence B. Bernard, Esquire
1201 New York Avenue, NW, Suite 1000
Washington, DC 20005

APPENDIX B

DISTRICT OF COLUMBIA COURT OF APPEALS

FILED

No. 96-CV-1052 JAN 9, 1998

LAWRENCE B. HANLON, APPELLANT,

v.

JAMES A. DUNBAR, APPELLEE.

Appeal from the Superior Court of the
District of Columbia,
Civil Division

(Hon. Geoffrey M. Alprin, Trial Judge)

(Argued October 16, 1997 Decided January 9, 1998)

Before: STEADMAN and REID, ***Associate Judges,*** and GALLAGHER, ***Senior Judge.***

MEMORANDUM OPINION AND JUDGEMENT

In the complaint filed under oath by appellant in the trial court on April 10, 1996, appellant alleged considerable instances of "malpractice of law and malicious interference" by appellee in his legal representation of appellant some years in the past. These factual assertions were contained in the complaint in 125 numbered paragraphs. The charges were supported by factual assertions, and were stated by appellant to have begun in 1987. For example, appellant

charged in his trial court complaint that he had engaged appellee to represent him in a trial court proceeding concerning "the $95,000.00 unlawful sale and misappropriation of [appellant's] assets in a closely held D.C. corporation" in which he was a 50% shareholder. He charged that appellee (his then attorney) obtained a default judgment but, after a series of private meetings with the judgment debtors, "abruptly refused to enforce any of the six (6) elements listed on the Judgment." He alleged further that appellee (his then attorney) without his knowledge or consent "arbitrarily elected to conduct ... a private, unsupervised meeting in his office in lieu of proceeding with the public Debtor's Examination, as previously agreed upon and arranged with" appellant. He then alleged that appellee proceeded to engage in "unauthorized" private meetings with the judgment debtor and then filed a praecipe suspending the wage garnishment placed on the judgment debtor without collecting any money in "the terms of [the] garnishment." He then went on to charge in the Complaint that appellee became "openly sympathetic" to the judgment debtors and "openly hostile toward the Plaintiff's interests, refusing to enforce any of the six (6) items listed on the judgment awarded the Plaintiff" (appellant here).

After charging additional misconduct, appellant further asserted in the Complaint that his then attorney (appellee here) "wilfully acted against the Plaintiff's instructions to compel the Judgment Debtors to pay the ... [n]ote as ordered pursuant to the terms of the D.C. judgment" and "refused to reimpose the writ of garnishment and attachment of wages against the Judgment Debtor ...." The Complaint then went on to charge that his attorney "routinely undermined the interests of the Plaintiff and maliciously interfered with the Plaintiff's efforts to enforce the judgment by perpetrating a pattern of fraud, deception,

and harassment against the Plaintiff [appellant here] ... thus seriously damaging the interests of the Plaintiff over a period of years ...."

Subsequently, according to the Complaint (Count II), in a serious of "harassing, unsolicited calls made by the [appellee here]" from April 1989 to January 1992, "the Defendant sought to pressure the Plaintiff into granting a release without consideration to the Judgment Debtors first by fraudulently representing to the Plaintiff that the Judgment Debtors possessed no assets sufficient to satisfy any portion of the judgment;" and therefore appellant here "has been damaged by the Defendant's pattern of deception, fraud, and harassment directed by the Defendant against the interests of the Plaintiff."

Appellant stated in a court document[1] that due to appellee's misconduct, which he labeled "malpractice," appellant dismissed him as his attorney in February 1992.

It is evident, therefore, from documents filed by appellant previously in the trial court in his proceeding that appellant was aware at least as far back as February 1992, of the acts of malpractice alleged in this proceeding. This awareness culminated in the dismissal of appellee as his counsel and the retention of a Mr. Lipstein as successor counsel to pursue the same litigation. It is also evident that appellant had incurred injury stemming from the malpractice complained of, and the requirement in a malpractice suit that the plaintiff had suffered some injury from the alleged wrongdoing is clearly met here. *See Knight v. Furlow*, 553 A.2d 1232, 1235 (D.C. 1989). This conclusion is consistent

[1] This document was his Reply Memorandum filed June 1, 1996.

with a recent case in which we charged the plaintiff, based on facts alleged by her, with inquiry notice of her claim well before they commenced suit and thus ruled the cause of action time-barred. *Hendel v. World Plan Executive Council,* No. 96-CV-105 (D.C. Dec. 30, 1997).

This litigation is barred by the three-year statute of limitations, D.C. Code § 12-301 (1981 ed.),[2] and accordingly it is

ORDERED and ADJUDGED that the judgment of the trial court is, therefore, affirmed.

FOR THE COURT:

/s/GARLAND PINKSTON, JR.
Clerk of the Court

Copies to:

Honorable Geoffrey M. Alprin
Clerk, Superior Court

Lawrence Hanlon
3720 R Street, NW
Washington, DC 20007

Lawrence Bernard, Esquire
1201 New York Ave., NW, Suite 1000
Washington, DC 20005

[2] The complaint was filed by appellant on April 10, 1996, and alleged acts of malpractice going back to the late 1980's and early 1990's. For example, in February 1992, appellant dismissed appellee as his attorney, so the acts complained of pre-dated that date.

APPENDIX C

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

LAWRENCE B. HANLON,	*
	*
Plaintiff,	*
	*
vs.	*Civil Action No.
	* 96CA2901
	* Calendar I
JAMES A. DUNBAR,	* Judge Alprin
	*
Defendant.	*

ORDER

The court has before it (1) defendant's Motion to Dismiss, (2) plaintiff's Opposition thereto and Request to Extend Time to Supplement Response, (3) defendant's Reply and Opposition to Plaintiff's Request to Extend Time to Supplement Response, (4) plaintiff's Response to Defendant's Reply, (5) defendant's Surreply in Support of Motion to Dismiss, and (6) plaintiff's Response to Defendant's Surreply. Following review of the entire record in this case, the court concludes that plaintiff's action is barred by the statute of limitations.

Legal malpractice claims in the District of Columbia must be filed within three years from the time the right to maintain the action accrues. See D.C. Code § 12-301 (1995 Repl); Knight v. Furlow, 553 A.2d 1232 (D.C. 1989). The

claim accrues when one knows or "should know (1) of the injury, (2) its cause in fact and (3) of some evidence of wrongdoing." Bussineau v. President & Dir. of Georgetown, 518 A.2d 423, 425 (D.C. 1986). If the client cannot ascertain the full extent of the injury prior to the enforcement of a judgment, the inchoate nature of the injury will not preclude the possibility of earlier injury. Knight, 553 A.2d at 1236.

Plaintiff contends that his claim did not accrue until March, 1994, when plaintiff's successor counsel enforced the judgment against the debtor. Pl.'s Compl. ¶ 20. However, since plaintiff know of his alleged injuries -- excessive attorney's fees, failure to receive garnished wages from the debtor, attributing the injuries to defendant -- substantially more than three years before initiating this action on April 10, 1996, the right to maintain the action has been extinguished by expiration of the statute of limitations.

Accordingly, it is this 2 day of July, 1996,

ORDERED, that plaintiff's Request to Extend Time to Supplement Response is **GRANTED**; and it is

FURTHER ORDERED, that defendant's Motion to Dismiss is **GRANTED**.

/s/Geoffrey M. Alprin
Associate Judge
(Signed in Chambers)

Copies to:
Lawrence B. Hanlon
3720 R Street, N.W.
Washington, D.C. 20007

James A. Dunn, Esq.
1201 New York Avenue, N.W.
Suite 1000
Washington, D.C. 20005-3917

APPENDIX D

VENABLE, BAETJER AND HOWARD
ATTORNEYS AT LAW
1800 MERCANTILE BANK & TRUST BUILDING
2 HOPKINS PLAZA
BALTIMORE, MARYLAND 21201-2978

RICHARD M. VENABLE (1839-1910)
EDWIN G. BAETJER (1868-1945)
CHARLES MCH. HOWARD (1870-1942)

BENJAMIN R. CIVILETTI, P.C.

WRITER'S DIRECT NUMBER IS
(410) 244-7600

MAY 23, 1994

Mr. Lawrence B. Hanlon
3720 R Street, N.W.
Washington, D.C. 20007

Dear Mr. Hanlon:

After reviewing your letter of March 30, I referred it to other lawyers in the firm to look into your assertions. I have not yet received their information and views and, therefore, I have not been able to respond to you yet. I write now because of your follow-up letter of May 13 asking me for a timely response. I will respond further when able to do so.

Sincerely,

/s/Ben Civiletti
Benjamin R. Civiletti

BRC:jb
52-321/BLULIT

APPENDIX E

GREENAN, WALKER, TRAINOR & BILLMAN
ATTORNEYS AT LAW
CAPITAL OFFICE PARK
6411 IVY LANE
SUITE 706
GREENBELT, MARYLAND 20770

(301) 982-1003
FAX (301) 982-4009

September 13, 1995

Lawrence B. Hanlon
3720 R Street, NW
Washington, DC 20007

Dear Mr. Hanlon:

I am in receipt of your correspondence and accompanying documents dated August 25, 1995. Although this office has filed malpractice actions against other law firms it has agreed to do so only on very rare occasions. I am sorry, but this office would not agree to file a malpractice action against Mr. Dunbar, Esquire, or Venable, Baetjer, Howard & Civiletti.

I am enclosing you[r] correspondence and materials.

Very truly yours,
/s/James M. Greenan
James M. Greenan

JMG:rm
Enclosures
JMG/LETTERS/Hanlon.2

APPENDIX F

LAW OFFICES
SHAFFER AND DAVIS CHARTERED
SUITE 440 RESEARCH OFFICE CENTER
2275 RESEARCH BOULEVARD
ROCKVILLE, MARYLAND 20850

AREA CODE 301
921-2002
FAX (301) 948-1819

August 31, 1995

Lawrence B. Hanlon
3720 R Street, N.W.
Washington, D.C. 20007

Dear Larry:

I am returning to you the packet of material that you sent to me concerning your complaint against Mr. Dunbar and other members of the firm of Venable, Baetjer, Howard & Civiletti. I frequently serve as an inquiry panel member for grievances filed against Maryland lawyers and law firms, consequently I am reluctant to venture an opinion on a Complaint that has already been reviewed by Bar Counsel's office.

Our firm has handled with some success several major legal malpractice cases in the last eighteen years and I currently am involved in the prosecution of a substantial case in the Circuit Court. We do not handle these cases on a straight contingent fee basis and, given consideration to our hourly rates, the monetary claims have to be in the

substantial six figures for the client to achieve a financial result that is economically beneficial to him or her after the fees and expenses are paid. Accordingly, if the matter had not been the subject of a grievance, I seriously doubt that we would have wanted to become involved in the Dunbar matter.

Thanks for thinking of me about the Venable complaint and I won't hold it against you for not bringing your legal matters to us originally.

Personal regards.

Sincerely,
SHAFFER & DAVIS,
CHARTERED

/s/I.J.
Peter I. J. Davis

APPENDIX G

CURTIS, MALLET-PREVOST, COLT & MOSLE
ATTORNEYS AND COUNSELLORS AT LAW
1801 K STREET, N.W.
SUITE 1205 L
WASHINGTON, D.C. 20006
TELEPHONE: 202-452-7373
TELECOPIER: 202-452-7333
VOICE MAILBOX: 202-452-7377

November 15, 1995

Mr. Lawrence B. Hanlon
3720 R Street, N.W.
Washington, D.C. 20007

Dear Larry,

I am sorry to be so slow in getting back to you but I wanted to show your material to my litigation partner who has been out of town.

Unfortunately this is not the kind of situation in which we could help you with. We are calling around to see who you might call and if we come up with anyone I'll let you know.

Good luck and all the best.

Sincerely,
/s/Preston
Preston Brown

APPENDIX H

(The following is a transcript of the Oral Argument before the DCCA transcribed independently from the tape provided by the DCCA by the Diversified Transcription Services, Inc., 1025 Vermont Avenue, N.W., Washington, D.C. 20005 and reformatted by Petitioner in accordance with the Rules of this Court. There are no transcript numbers.)

IN THE COURT OF APPEALS
OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

LAWRENCE B. HANLON,	:	
Appellant,	:	
v	:	
	:	Civil Action No.
JAMES A. DUNBAR,	:	96-CV-1052
Appellee.	:	

Wednesday, October 16, 1997
Washington, D.C.

The above-entitled matter came on to be heard for Oral Argument before THE HONORABLE JOHN M. STEADMAN, THE HONORABLE INEZ SMITH-REID and THE HONORABLE GEORGE R. GALLAGHER Judges in

and for the District of Columbia Court of Appeals, Civil Division, beginning at approximately 2:00 p.m.

APPEARANCES: 2

On Behalf of the Appellant:

Lawrence B. Hanlon
3720 R Street, N.W.
Washington, D.C. 20036

On Behalf of the Appellee:

Lawrence B. Bernard
Venable, Baetjer, Howard
& Civiletti
1201 New York Avenue, N.W.
Washington, D.C. 20005

* * * * *

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PROCEEDINGS

THE COURT: We have one case to be argued from the summary calendar this afternoon, it's Lawrence B. Hanlon v. James A. Dunbar, Number 96-CV-1052. Mr. Hanlon.

MR. HANLON: Good afternoon, Your Honor. My name is Larry Hanlon, the appellant in this case. I would like to make my argument and reserve two minutes for rebuttal.

THE COURT: All right.

MR. HANLON: I have appealed the Superior Court's order because it was based on several errors, chiefly its conclusion that I had knowledge of injury earlier than March 17, 1994. The lower court failed to give adequate consideration to the discovery rule of this court as articulated in Bussineau versus the President and Directors of Georgetown College because I had no actual or constructive knowledge of injury until the enforcement of the appellee's allegedly no longer enforceable or valid judgment triggered on March 17, 1994.

The knowledge of injury its cause in fact and some evidence of wrongdoing, the prerequisites that occur in a legal malpractice claim. In fact, the appellee himself is unable to specify a date on which I might have acquired earlier knowledge of injury.

THE COURT: The trial court did, didn't it?

MR. HANLON: Yes, it did, Your Honor. I feel that it dismissed the case too early without considering that I had never been put on notice that the judgment was enforceable. I had only been told that it was unenforceable.

THE COURT: Well, eh, ... let's see. The requirements are do you know of the injury, its cause in fact and that you have evidence of wrongdoing. So your

position, if I understand it correctly, is that you did have evidence of wrongdoing and you did have knowledge that wrongdoing might have resulted in injury. That is to say it could be that this was in fact collectible. But I think it's your position you didn't know that you actually had been injured because until you were able to in fact recover from one of the defendants, any injury would have just been speculative and not proven. Is that the point?

MR. HANLON: Well in a sense, yes. The point is I had no knowledge of injury until the collection triggered. My knowledge of injury, its cause in fact and I have some evidence of wrongdoing because I had already been told that it was no longer enforceable without -- and although the lower court did indeed--

THE COURT: So you would say that if you had sued Mr. Dunbar a year or two earlier and had alleged you did all these things, which I know about and I can prove, then my injury is that in fact that debt is collectible against one of the defendants, that you could lose the case because he would say but you didn't actually sue another defendant and show that it was collectible. Is that the way it was?

MR. HANLON: I'm sorry, Your Honor. I'm not sure I understood your question.

THE COURT: What it says to me is that your position essentially is in order to show injury for failure to bring a lawsuit, the plaintiff has to actually bring that lawsuit and win. Until and prior to that time he cannot claim that he has been injured in any way; is that right?

MR. HANLON: Well I suppose that it could be said. But what I really want to say is that I did not know I had been injured until the collection triggered my knowledge of injury.

THE COURT: Well, you knew that you might have been injured because otherwise why did you go out and hire another lawyer and ask him to try and enforce it against

somebody who the previous man had said you can't win. So you must have had some suspicion that you might be successful. And if I understand, your argument is yeah, I had suspicion but I wasn't really injured until I -- I don't understand.

MR. HANLON: Well I know my earlier statements may have indicated that, but I felt that -- if I make a brief statement before answering any questions.

THE COURT: Yeah, sure.

MR. HANLON: Following March 17th, I did seek legal counsel the following month. I sought legal counsel to bring suit against the appellee for the injury. However, the lawyers I consulted with advised me that no attorney would risk handling it in such an important firm for this type of case. Accordingly, as perilous as it is, and it is perilous, I continued pro se in order to gain access to the judicial system. And I wrote my complaint myself without legal counsel in a layman's idiomatic English because I was unfamiliar with the technical terms of art required in drafting a civil complaint.

Therefore, my complaint may have, at least in the view of the appellee, given the impression I had earlier knowledge of events that were only in fact retrospectively realized after March 17th. Because the idiomatic usage of the verb to know more often than not means knowledge that is acquired after the occurrence of a given event such as the Monday morning quarterback would say, I knew the Redskins would win, when in fact they knew only after the results of the game had been announced.

And I feel, therefore, that my layman's idiomatic complaint, although correctly standard idiomatic English, that is meaning knowledge acquired after the occurrence of an event, cannot be construed as one written by an expert in the field of law and therefore, in no way reveals my actual or constructive knowledge of injury before March 17th.

THE COURT: No. But you had counsel who was representing you that brought a lawsuit with your authority and presumably for some kind of compensation, if only contingent, against a defendant. And all I'm trying to understand is at that point you must have had some feeling that you had been injured because otherwise, why would you do that? And if I understood, your point is but until I actually won that lawsuit, I couldn't really say that I was injured.

MR. HANLON: Well I know that is the impression given by the earlier pleadings.

THE COURT: But this is your argument, isn't it, that you did not have knowledge of the injury until March 17th which is the date on which you won your lawsuit. You got a recovery, you didn't exactly win the lawsuit, but the defendant paid money because she wanted to go to Paris or something and be free of the debt, right?

MR. HANLON: Yes, Your Honor.

THE COURT: But my problem is as to that money, you were not in fact injured. You weren't injured as to the money that you recovered.

MR. HANLON: No.

THE COURT: So what is the point. In other words, what is this injury for which you're now suing which you said you didn't know until March 17th?

MR. HANLON: Well remember that is only part of the judgment that was collected upon. And I feel the appellee has deliberately misled me regarding the status of the judgment in view of his protection of and contacts with the judgment debtors.

THE COURT: But I guess let me ask it another way. What money are you now -- what damages are you now claiming you suffered? You can't claim you suffered damages as to the money you recovered from the third party. So therefore, it must be some other money which you're

saying could have been recovered. But how does the March 17th recovery show that there's other money which could be recovered? What made it on March 17th suddenly you realized you had an injury when all that happened on March 17th is you had less of an injury than you otherwise would have thought you had? That's what I have trouble understanding, the argument.

MR. HANLON: Well there is still money left on the judgment. The judgment was for $56,000 plus legal interest, and I collected 25 on that from the judgment debtor. There was another collection on a related action, a third-party collection on a promissory note.

THE COURT: On March 17th.

MR. HANLON: Earl S. Martin is not even named on the judgment. So that was back in --

THE COURT: Well what happened on March 17th?

MR. HANLON: On March 17th, one of the two judgment debtors paid me $25,000.

THE COURT: In addition to what you had already collected.

MR. HANLON: Well I had collected but not on that judgment.

THE COURT: You collected from the guarantor, hadn't you?

MR. HANLON: Well that was another action.

THE COURT: Yeah, but it was the same debt.

MR. HANLON: Well, that's true, yes.

THE COURT: So why on March 17th did you suddenly realize that you had an injury that you didn't realize you had on March 16th and what was that injury for which you're now suing?

MR. HANLON: Well the injury would have been the appellee misleading me about the status of the judgment, putting me on notice that it was not collectible and the balance due and whether it was due on the --

THE COURT: When in fact it was collectible, at least up to $25,000.

MR. HANLON: Yes, Your Honor.

THE COURT: But you collected it after $25,000.

MR. HANLON: Yes, I did.

THE COURT: So you must be saying that more of it is collectible except for the malpractice.

MR. HANLON: Yes.

THE COURT: How is that proven to a greater or lesser extent by the fact that you happened to successfully collect against one of the parties? Maybe the advice was correct as to everybody else, that $25,000 is the max you could collect. But that you did collect.

MR. HANLON: In fact, Your Honor, I couldn't collect anything because I was put on notice that it was not -- the knowledge that the judgment was not enforceable. That's my argument, that I did prove it was enforceable with that collection.

THE COURT: At least up to that amount.

MR. HANLON: Up to that amount.

THE COURT: Did you say you wanted to save a little bit of time?

MR. HANLON: Yes, Your Honor.

THE COURT: Because maybe we ought to hear from the appellee and then you can have a chance to answer whatever arguments they made; or did you not cover all your points?

MR. HANLON: Well I didn't cover all my points, time is up for my side. But I wanted to say, if I may very quickly then, that the lower court also cited my knowledge of excessive fees. But I never made any complaint about excessive fees. Nowhere in the record did I complain that there were excessive fees, much less that I had knowledge of them. And very quickly, Your Honor, if I may, even the

appellee himself is unable to specify the date that I might have acquired earlier knowledge of injury.

For example on page 15, line 12 of the appellee's brief he states: "Plaintiff's case appears to allege that he knew of many acts of alleged disloyalty and appears to claim that he knew immediately that he was injured by all of them. For example, while Plaintiff did not allege when he learned that the Defendant was ." And then again on page 16, line 9, he says, "Mr. Hanlon knew of excessive attorney's fees." I never even complained of attorney's fees. I paid all of my bills on time and was even contacted a year later after that when there was about $600 in expenses that had forgotten to be included in the invoices. And I paid those.

THE COURT: Right. I remember this is all in your brief you make these points.

MR. HANLON: Somewhere in the brief, yes.

THE COURT: Right. We'll give your brief very careful consideration. Why don't we hear from the appellee and then you'll have a chance for rebuttal.

MR. GOEWEY: Good afternoon, Your Honors, David Goewey with the Venable law firm for appellee James Dunbar. With me is my colleague Lawrence Bernard, also with Venable law firm. As an initial matter, Your Honors, I would to direct the Courts to RDH Communications v. Winston, a recent decision.

THE COURT: Yeah, but I don't think that would apply here, would it?

MR. GOEWEY: Well I wanted to raise that for your consideration, Your Honor.

THE COURT: We're well aware of the case. That's a different rule. It was a continuous representation rule.

MR. GOEWEY: Upon the chance that --

THE COURT: Do you think that should be applied to this case? It just came down last week or two weeks ago.

MR. GOEWEY: I understand that, Your Honor. But Judge Alperin treated this as obviously a discovery rule case. An argument could be made that there was really nothing obscure about this alleged tortious misconduct and the injury and that the case should have accrued beginning in September of 1987. But assuming that Judge Alperin is correct, this was at the time he rendered his decision a discovery rule case had thus been satisfied and was now because the tortious misconduct and injury weren't absolutely clear from the outset.

I raised that decision on the off chance that the panel considers this to be a continuous representation case because of the ambiguity in the record as to just when Mr. Dunbar stopped providing counsel to Mr. Hanlon in connection with this matter. The recent decision in RDH would indicate that for continuous representation matters, you take the end of the representation and add three years. In this case I think you're right, Your Honor. The discovery of the injury predated the end of the representation. That's clear throughout the complaint. It is liberally laced with recorded refusals on the part of Mr. Dunbar, unauthorized acts on the part of Mr. Dunbar, all to the detriment of Mr. Hanlon beginning, as I said, in September of 1987, nearly nine years before the complaint was ever filed.

THE COURT: Let me ask you this, in the court's findings which is what we're really dealing with here, the trial court's findings, there's only two sentences really that's the findings, crucial findings, aren't there? Page 171 of the record the court says, "Since Plaintiff knew of his alleged injuries . . . excessive attorney's fees, failure to receive garnished wages from the debtor, attributing the injuries to Defendants substantially more than three years," and so forth. And that's really what's being appealed from, isn't it?

MR. GOEWEY: Correct, Your Honor. That is according to then. If you'd like me to address the

particulars of those injuries, as to the attorney's fees, although Mr. Hanlon now represents that he has no interest in those attorney's fees and the extra attorney's fees incurred through separate successor counsel is not in his mind an injury, I think the case law is clear, including Knight v. Furlow, that attorney's fees is one form of injury. As to the delay --

THE COURT: What do you mean, attorney's fees are one form of injury, financial injury.

MR. GOEWEY: An injury other than Knight v. Furlow pretrial discovery.

THE COURT: Attorney's fees in what respect?

MR. GOEWEY: Injuries occasioned to this gentleman through the alleged malpractice. The alleged malpractice is failure to timely collect a debt, to take all practicable legal action to collect on that debt, beginning in September 1987. And the first overt act, if you will, was the allegation that attorney Dunbar unilaterally canceled the debtor's exam and unilaterally suspended the garnishment proceeding, thereby delaying the day that this gentleman could collect on the judgment obtained through Mr. Dunbar's good work.

THE COURT: And therefore, that was malpractice.

MR. GOEWEY: That's the allegation. And the allegation expressed in Mr. Hanlon's complaint is that for five years attorney Dunbar engaged in this form of malpractice. He was disloyal, he represented his opponent's interest at the expense and to the detriment and the injury of his client, Mr. Hanlon.

THE COURT: All of which occurred when?

MR. GOEWEY: Beginning, Your Honor, on September 17, 1987 when attorney Dunbar is alleged to have against Mr. Hanlon's wishes and without his prior approval, canceled the debtor's examination of the judgment debtor who ultimately paid $25,000 to settle the judgment against

her and to clear up her credit records so that she could accept a position abroad.

THE COURT: And the complaint was filed what date; that was 7/87?

MR. GOEWEY: April 10, 1996 was the legal malpractice complaint.

THE COURT: The filing date?

MR. GOEWEY: That's right, some nine years or nearly nine years later, Your Honor. Now in terms of the allegations here this afternoon that appellee, for his part cannot pinpoint the time when the statute of limitations accrues again, Your Honor, I bring you back to the complaint where there are a number of --

THE COURT: What was he obliged to know in order to start that time running so far as malpractice is concerned?

MR. GOEWEY: The Knight v. Furlow, the injury which again, can be attorney's fees, can be interest.

THE COURT: You say it can be attorney's fees. What do you mean it can be attorney's fees, what about the attorney's fees?

MR. GOEWEY: The fact that he was caused to incur additional attorney's fees through successor counsel to ultimately collect on the debt. It can also be the time value of money or interest, Your Honor. And I note that in the prayer for relief in the complaint Mr. Hanlon prays for $20,000 in interest on the $57,000 judgment obtained through attorney Dunbar's efforts.

And he asked that the court have that interest run from 1987 through March 17, 1994, when ultimately this woman came forward and said I want to clear this spot on our title, I want to accept a position abroad. I'm prepared to pay you $25,000 to take me off that judgment. So he wants $20,000 but it costs, as he measures it, the injury as he measures it, from 1987 through time in 1994.

THE COURT: And therefore, that's indication on his part that he knew the statute or should have known the statute would begin to run in '87.

MR. GOEWEY: And certainly it's an indication of the injury which the court inquired about. And again, returning to Knight v. Furlow, the position there by the Court of Appeals is that the quantum need not be complete. There must merely be some appreciable injury. It doesn't have to be the greater part of the injury, it doesn't have to be all of the injury but it has to be some appreciable part of the injury. And here we have that in the form of whether it be the attorney's fees through successor counsel, whether it be the time value of money or the $20,000 in interest as Mr. Hanlon quantifies that figure.

THE COURT: Yeah, but that doesn't address his argument I don't think because his whole argument is I'm not entitled to attorney's fees, I'm not entitled to interest, I'm not entitled to anything until I know that I could successfully -- your client could have successfully recovered money from the some of the defendants if he had just gone ahead and done it. And I didn't know until March of 1990 -- what was the date?

MR. GOEWEY: 1994.

THE COURT: 1994 that in fact that money could be collected. That's his argument as I understand it. Now why isn't that a fairly legitimate argument?

MR. GOEWEY: Well if I can use -- my shorthand reference to that is the light bulb theory. That on that day when he got a check for $25,000, the light bulb went on and he realized that advice that attorney Dunbar had been giving me in years past was inaccurate. Here I've got $25,000 in hand from that judgment he got from a long time ago. Take that to it's logical conclusion, Your Honor. This is a judgment that attorney Dunbar secured for the appellant in 1987, August of 1987.

In this forum, judgments are good for 12 years. The reason that March 1994 is put before you is that at that point in time, through fortuitous events, one of the judgment debtors got a government position that requires you to clear out these debts. Under this theory of Mr. Hanlon's, she could have gotten that government position up to and through and including July of 1999, just short of 12 years after the judgment had been obtained, when it was still valid.

And under this theory, taken it to its logical end, he would then have that 12 years that the judgment had been valid plus an additional three years because only then did he suffer injury as he defines it.

THE COURT: Well I think this is a grant of a 12(b)(6) motion, right. So we assume that everything he alleges is true, right.

MR. GOEWEY: That's a true --

THE COURT: The trial court didn't make any findings of any kind, right.

MR. GOEWEY: Correct.

THE COURT: You look at the face of the complaint, that's all and think are there any conceivable facts under which this statute of limitations problem is not conclusive as a defense, right.

MR. GOEWEY: If you take his allegations as true.

THE COURT: Okay. Now it seems to me that what is the case is turning on is when does somebody have "knowledge of the injury." And the claim is you should have sued some other people and if you had, you should followed up on the judgment to enforce the judgment against these defendants that you told me were judgment proof. Now when is it that he knew enough that he had been injured, because in fact his attorney could have collected some money from those people?

MR. GOEWEY: His actual or imputed knowledge?

THE COURT: Exactly, when?

MR. GOEWEY: In 1990, he had successor counsel, wholly separate from the Venable, law firm who is engaged in concerted efforts to collect on the judgment.

THE COURT: Is that when counsel -- does the face of the complaint show when counsel was --

MR. GOEWEY: Exhibit 10 to the complaint and there's a factual allegation as well. Exhibit N are court papers filed by successor counsel in 1990 in an effort --

THE COURT: Successor counsel now is someone outside the Venable firm?

MR. GOEWEY: Attorney Lipstein, I think.

THE COURT: Yeah, that's his name.

MR. GOEWEY: Apparently outside the Venable law firm.

THE COURT: Now what is this 1992 letter when he finally got rid of your client?

MR. GOEWEY: His allegation again in the complaint is that between '90 and '92, he tried to conceal from the Venable law firm generally and attorney Dunbar particularly, the fact that successor counsel attorney Lipstein was making a concerted effort to collect on the judgment, efforts that took more than three-and-a-half years and the fortuity of a government position for one of the judgment debtors. But he said from '90 to '92, he tried to conceal from Venable the fact that he was trying to collect through other counsel because he was afraid attorney Dunbar would interfere with those efforts to perform. Only in February of '92 --

THE COURT: Why do you say he said this? I mean, this is the allegation which we take as true.

MR. GOEWEY: Very well.

THE COURT: Right, I mean, that's what a 12(b)(6) is all about. So he does conceal it but sooner or later -- and I thought your argument was even under RDH, he doesn't

get anywhere because he got rid of Dunbar at the latest with that letter of 1992.

MR. GOEWEY: Correct.

THE COURT: And the lawsuit was filed four years after that.

MR. GOEWEY: More than four years after.

THE COURT: Okay. So it does come down to the injury problem. Now how much -- what is your view as to the -- what do you have to know in order to feel that you are injured where you haven't yet proven that you are injured positively. What is your theory, what is sufficient? Do you have kind of a strong suspicion, do you have a strong feeling? Do you have enough of a feeling for you to go out and get another lawyer to try and enforce it?

MR. GOEWEY: I think RDH and Knight v. Furlow say there's nothing magical about the involvement of counsel. It's what would a reasonable person have known, taking charge of their own affairs, what knowledge can you impeach them. And in this case, you don't just have a lay person dealing with an attorney. You have a lay person, a business person, who then obtained successor counsel more than roughly six years before filing a legal malpractice suit.

THE COURT: I understand that but you admit, do you not, that until 1994, he didn't have any firm proof that Mr. Dunbar wasn't correct in saying these defendants are judgment proof because that's the first time he ever collected anything from anybody.

MR. GOEWEY: He had collected $25,000 through Venable's efforts.

THE COURT: Against the guarantor.

MR. GOEWEY: Against I think the note maker but that again is related to $57,000 judgment.

THE COURT: Yeah, I understand that. I mean, he's asking for more money than he's entitled to but never mind that. I mean this is my problem is figuring out how

much you have to know. I mean, suppose for example the surgeon leaves a sponge in your stomach and you know that he did so. So you have knowledge of malpractice. Your problem is to show injury.

The surgeon says yeah, a sponge is there, it will dissolve. Don't worry about it, blah, blah, blah. Well, I mean, you start feeling very sick but you don't know if it comes from the sponge. It might. Has the statute started to run or do you have to wait and go to a couple of people and they say well it could have been the sponge but maybe not. So you don't have any good proof yet.

And then finally you get a second operation and sure enough it shows for sure the sponge was the cause. Now when does the statute start to run under discovery rules? What do we mean when we say knew of the injury?

MR. GOEWEY: Or should have known through the exercise of diligence.

THE COURT: Right.

MR. GOEWEY: Your question points out the difficulty of laying out a bright line. This is what is appropriate in each and every case. So I default to the specific factual allegations here which include --

THE COURT: Stick to the sponge for a minute.

MR. GOEWEY: As to the sponge, if again, through your hypothetical if he's having pain and difficulty in the area of the incision and he does nothing about it for many years and in the complaint he acknowledged -- if it's an abdominal operation and he has pain in his foot, and I think the reason --

THE COURT: But here he does do something. See he's the guy going on he knows that it's a the sponge. And he gets a lawyer and says let's see if we can collect. And finally he does collect, and he says now I know that Dunbar guy was telling me lies. It is collectible.

If I understand what your answer was then, are you saying to the court that if a person knows a surgeon, finds out a surgeon has left a sponge inside of a stomach in an operation, that that isn't enough right there to trigger the statute?

MR. GOEWEY: Well that triggers the statute but that's before knowledge.

THE COURT: You don't have to die and then have it triggered.

MR. GOEWEY: No. Actual knowledge and I think this is actually a case of actual, not imputed knowledge. He knew of the malpractice. As to the injury, Your Honor, he knew he didn't have the money in hand. He never did collect the judgment. He was given an offer of settlement so that somebody could be released from the judgment. But again, given the nature of the judgment 12 years in D.C., 12 years and renewable in Maryland, 20 years and renewable in Virginia, under this hypothetical if 18 years or 11 years in the District of Columbia after the judgment was entered, somebody wanted to clear up that judgment from their record and came forward and said look, I'm going to pay you $10,000 because you got this $80,000 judgment against me and I want it gone. I've got a presidential appointment, what have you. Then you have a policy where 11 years has elapsed and then you still years from that, 14 years and the underlying policy of any statute of limitations, of course, is the fading of memory, losing witnesses losing documents and repose. And attorney Dunbar had the right to repose.

THE COURT: Okay. January 1, 1991, Mr. Hanlon filed suit against Mr. Dunbar. And he says you committed malpractice, you concealed all this stuff from me, you said it wasn't collectible and it is collectible. Now what kind of damages does he ask for and how does he prove them?

MR. GOEWEY: In that circumstance he asked for the additional attorney's fees he's incurred. He asked for --

THE COURT: He hasn't incurred any yet.

MR. GOEWEY: Well in 1981, he had attorney Lipstein on the scene.

THE COURT: I know but he doesn't do anything. He just says I know all this is so and what's more I'm going to prove that a decent attorney could collect against these people.

MR. GOEWEY: Your Honor, in your hypothetical he doesn't have a decent attorney working for him.

THE COURT: He doesn't try to do it all. He just says it's collectible and he claims it wasn't.

MR. GOEWEY: One option is obviously to file it. Obviously the statute stops running and then you stay the proceeding until such time as you're able to collect that judgment.

THE COURT: Is that the way it works or do you then file a 12(b)(6) and say there's been no allegation of any injury? See that's what I'm just trying to get straight. I don't think it's an easy question as to what we mean when we say know of the "injury," when you don't really know whether or not there's an injury because it's uncertain, like a lot of damages are uncertain.

MR. GOEWEY: And under Knight v. Furlow the exact quantum doesn't have to be established.

THE COURT: That's true.

MR. GOEWEY: But under your hypothetical I think you're saying the injury is essentially attorney Dunbar saying in my considered judgment you'll never see a penny of that from these people, they're judgment proof. That's the injury claimed. His action was not to rely on that to his detriment, at least not after 1990. After 1990 he obtained a new attorney and said I want you to make your best effort to collect on this. So there's no unfairness vis-a-vis Mr.

Hanlon where he was disabused or incorrectly counseled and relied on that and never saw a penny. He said I'm not accepting that advice.

THE COURT: Well let me ask you this then, what is your best case where a defendant has claimed that there's no recovery because of a failure to show injury and the court says a plaintiff can bring a lawsuit even though he can't prove all his injuries if he can recover for some of it or, better yet, if he has a suspicion that there may be injury? That's essentially what you're saying, aren't you? You're saying he should have filed the lawsuit before he was positive that he in fact had been injured.

MR. GOEWEY: Well I did because under the constraints of assuming a large legal malpractice which, of course is another issue altogether.

THE COURT: Oh, yeah, always. Yeah, but that's not his point.

MR. GOEWEY: But he can file a lawsuit within three years of the time when he has been injured, knows of its cause and there's some evidence of wrongdoing.

THE COURT: But he hasn't been injured.

MR. GOEWEY: He's been injured in the sense that the injury he's claiming is you were remiss, you were recalcitrant, you dragged your heels in enforcing this judgment, thereby causing me expense in the form of another attorney. Time value of money which I calculate at $20,000 and I still don't have the whole judgment in hand. To this day he hasn't enforced that judgment. He simply got someone to come forward to say I'll settle with you, you get my name off the judgment. One of the three judgment debtors did that because she wanted to go abroad, wanted to accept the position.

THE COURT: Okay. Well I think we get the thrust of your argument. Let me see if Judge Gallagher has --

THE COURT: In other words if the injury is apparent to a reasonable person, even though all the damages have not yet accrued, then the statute begins to run nevertheless. For example, in RDH, when the lawyer filed that defective application to FCC, that was a malpractice, wasn't it?

MR. GOEWEY: It was.

THE COURT: And though they waited and went through the courts and the appellate court and they lost, lost, lost, you didn't have to wait until the court confirmed the commission on their denial of the application for malpractice to begin at that point.

MR. GOEWEY: And the court made the policy decision. That process took more than three years. So that plaintiff was out of luck unless the court says as a policy matter we want to encourage people to work with their attorneys who committed the legal practice.

THE COURT: Well that's another aspect of it but I'm talking about the statute beginning to run.

MR. GOEWEY: The statute under the court's -- the Winston decision was tolled until the representation was terminated. He simply could have filed a legal malpractice action then but under the continuous representation rule which again, if applied in this case started to run --

THE COURT: That's the difference in RDH and the previous cases.

MR. GOEWEY: That's right. It was more than a three-year process. So he was out of court unless the court waited until the end of the representation which started to run the statute of limitations. The last point as to the --

THE COURT: I think this is more of a refined question you're talking about and I'll extend you a few minutes. When does it start to run, when the act is unethical or the act of the attorney which gives rise to it is committed and it's discovered then, or do you have to wait and maybe

go through for time to see how much damage and dollars is going to result from it?

MR. GOEWEY: I think that's what Winston gives you an option on. You can fire the counsel right when the certification page is lost.

THE COURT: And that's when the statute starts to run?

MR. GOEWEY: In that instance, the statute starts right then. If you choose to let that counsel try to correct his mistake, then when that effort fails or succeeds for that matter and the representation is terminated, then you have three years to bring the action.

THE COURT: But not under the law of this case that was tried and decided.

THE COURT: That's the present.

THE COURT: Yeah, that's the present law.

MR. GOEWEY: Assuming Winston -- and this would be the Knight v. Furlow discovery rule -- and certainly you can impute actual knowledge or constructive knowledge to this gentleman beginning in 1987 but certainly no later than 1992 when he fired attorney Dunbar. And there are a number of points along the way when you can also choose.

When he engaged new counsel in 1990, you can use that as the point when you impute to him knowledge that if you believed attorney Dunbar's actions were malpractice, that he then knew that he had been injured through the delay in collection, the cause was Dunbar. And the wrongdoing was disloyalty and failing to abide by his instructions and undermining his instructions and all the other litany of misdeeds set forth in the complaint. The final point as to --

THE COURT: Well before you end, you have to deal with the trial court's findings, don't you in this case?

MR. GOEWEY: Yes, Your Honor, certainly. And these records of attorney's fees and --

THE COURT: They are to receive -- excessive attorney's fees. They are to receive garnished wages of the debtor, attributing the injuries to defendant.

MR. GOEWEY: And if he chooses to receive garnished wages from the debtor, that was September 1987 when plaintiff alleges he unilaterally and without authority suspended the garnishment of her wages. This that came forward in 1994 and paid some money to get the judgment off her record. So by focusing on that garnishment issue, September 1987, the first act of malpractice which this gentleman well knew was caused by attorney Dunbar unilaterally -- under his allegations unilaterally suspending the garnishment proceedings. That's -- may not even support this gentleman's findings.

The only other comment I wanted to make as to what you've just said was in terms of the quantification or particularization of the amount of the injury, I will grant you that some of the injury would be considered speculative, had to be filed or complained in 1991 as under your hypothetical because at that point in time no one knew just what you would collect under the judgment.

And indeed as we stand here today, the judgment remains out there and will through the whole 12 years and it's conceivable at year 11.5 some more will be collected. But again, that's speculative. There were some hard injuries or damages alleged as of this point in time, 1991, the expenses of successor counsel, the time value of money which Mr. Hanlon attributes $20,000 from '87 through 1994.

THE COURT: What exactly is it you say he could have recovered in the way of damages in 1991, garnishment, lifting of the garnishment?

MR. GOEWEY: Had he sued in 1991, the injury that he had suffered was the delay in collecting money on the judgment. One allegation is that in 1987, September of '87,

he unilaterally, attorney Dunbar unilaterally and without authority, lifted or suspended the garnishment of this judgment debtor's wages. So that is something we don't have in the record evidence what she was earning at the time and how much he would have gotten through that garnishment each week or each month or whatever period the garnished wages would be collected.

That's some quantifiable sum although the allegations in the complaint don't set forth the exact amount of that relief. He simply said that was without authority and her wages should have been garnished as of 1987.

THE COURT: Well that was the trial court's finding, plaintiff to receive garnished wages from the debtor.

MR. GOEWEY: That is correct, and that is a quantifiable sum, although not quantifiable to the allegation.

THE COURT: Well I don't think you -- I mean, for malpractice you don't have to quantify it down to dollars and cents.

MR. GOEWEY: Right. And under Knight v. Furlow, I don't think you have to quantify the dollars and cents but there is some quantum. It doesn't have to be the greater part of the injury but it's something that's identifiable.

THE COURT: Yeah. But I don't know if that works where you have two distinct types of malpractice. That one was releasing the garnishment. The other one that he's alleging is that he conspired with the judgment debtors to tell you that it was uncollectible, or is it all one big act of malpractice?

MR. GOEWEY: Well, I don't know that those would be different counts of the complaint, but it certainly would be different factual allegations. They are different factual allegations. I don't think the court need break up the various and sundry acts of legal malpractice and address each and every one because there are dozens and dozens of

them. I only used one constituting a separate cause of action to address it in toto. And you can quantify as of September of 1987 damages done through the advice and the wrongdoing which is going against his express wishes, refusing his directives. So you have malpractice as early as September 1987 under the allegations of the complaint.

THE COURT: Okay. Well let's hear from Mr. Hanlon in rebuttal.

MR. HANLON: Thank you, Your Honor. Beginning with this allegation that I knew in September of 1987, I was counseled by the appellee that that was the right way to pursue this lawsuit. And at that time I bought that argument. It was only by the time I realized my injury that I realized the whole thing had been a hoax.

THE COURT: At what point did you learn that?

MR. HANLON: Well I would say on March 17th it became clear.

THE COURT: What?

MR. HANLON: That I had been strung along.

THE COURT: March 17th of what?

MR. HANLON: 1994, Your Honor. I've got to point out that the appellee is a member of the D.C. Bar sworn to promote the administration of justice.

THE COURT: You say you could not reasonably have drawn that conclusion prior to 1994?

MR. HANLON: That would be difficult. I mean, I grew up in a generation that grew up with the Ox-Bow Incident where they could hang somebody and find out later that he is innocent. I couldn't say that I knew about it.

THE COURT: You had no reasonable reason to believe, no sound reason to believe before that time?

MR. HANLON: No, Your Honor. I wouldn't say so. And also he called me in January of 1992 and told me again, put me on notice that it was not enforceable because the judgment debtor had called him. And I don't know,

maybe it wasn't enforceable. As I say, he's a member of the D.C. Bar sworn to promote the administration of justice, accordingly the full faith and credit were due to his counsel. I was a first-time lay plaintiff in a complicated civil suit full of technical issues, cross motions, words I'd never even heard of.

And also I had -- he's a member of a firm, a reputable firm that I trusted which automatically dispelled any type of ethical concern that -- I feel the court should axiomatically assume the complete opposite, knowing as it does, how complex the law and how complicated legal proceedings are to the lay person, that I submit these factors should be given serious consideration in determining when a person should know they're being defrauded by members of the D.C. Bar sworn to promote the administration of justice.

And to the rebuttal, I'd like to say once again the appellee has failed to adequately demonstrate that I knew or should have known of injuries earlier on. He therefore, has failed to sustain the burden of proof identifying the date on which I had earlier knowledge of injuries. For which reason, I ask this court to accept my date for the running of the statute. The appellee's line of argument is defeated because at no time did he ever put me on notice that the judgment was enforceable and any lay person who has not been put on notice by his or her counsel that said judgment was enforceable would not know that he had been injured until the occurrence of events that triggered discovery of injury.

And even if, for the sake of argument, appellees were able to prove that I might have had earlier knowledge of injury, which he can't because I didn't, then on the principles of equity he should be estopped from benefitting from his own supposed ability to prove my earlier knowledge of injury caused by his fraudulent counsel.

Accordingly, I request this court to utilize its discovery rule to run the statute from March 17, 1994 in order to grant me access to the basic justice of a trial by jury. Thank you, Your Honor.

THE COURT: Thank you, Mr. Hanlon. I forgot to mention that the third member of this panel is, of course, Judge Reid who is not here obviously. But she asked me to say that she will take the argument on the case and will, of course, participate in the decision which we will take under advisement, your arguments, oral arguments and the briefs and rule in due course.

And I want to thank counsel for both sides, well, Mr. Hanlon and Mr. Goewey for coming this afternoon for the oral argument.

(The proceedings were concluded.)